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Ragavan a/l Rajoo v Ignatian Benedict Duraisingham

B HIGH COURT (SHAH ALAM) — CIVIL SUIT NO BA-23CY-7–07 OF 2022
NOOR HAYATI J
9 JANUARY 2025

C *Civil Procedure — Preliminary question of law — Disposal of case on point of law — Plaintiff filed defamation action against defendant, a society — Defendant filed application under O 33 r 5 and/or O 14A of Rules of Court 2012 — Whether plaintiff could commence and sustain action on a cause of action in defamation against a society — Rules of Court 2012 O 14A & O 33 r 5*

D

Unincorporated Associations — Societies - Suits — Plaintiff filed defamation action against defendant, a society — Whether plaintiff could commence and sustain action on a cause of action in defamation against a society — Societies Act 1966 s 9(c)

E

The plaintiff was a member of Kelab PJ ('the defendant'), a society registered under the Societies Act 1966 ('Act 832'). The plaintiff had filed an action for defamation against the defendant as a club by naming its honorary secretary, Ignatian Benedict Duraisingham. In response, the defendant filed the present application for a question of law to be preliminarily determined pursuant to O 33 r 5 and/or under O 14A of the Rules of Court 2012. The initial question posed was: 'Can the plaintiff commence and sustain an action on a cause of action in defamation against the defendant, which is a society pursuant to the provisions of the Societies Act 1966'. The court however had proposed revised questions as followed: (a) whether the defendant could be sued for defamation in the light of the case of *Lim Lip Eng v Ong Ka Chuan (as a public officer of a society registered as Malaysian Chinese Association)* [2022] 4 MLJ 454 ('Lim Lip Eng'); (b) whether the Federal Court ('the FC') in *Lim Lip Eng*, referring to the statement in para 64 that 'as a matter of policy, the focus or our judgment must be confined to the question of law posed' meant that the judgment was limited only to whether a political party or society could sue for defamation; and (c) whether a society was a legal entity.

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I **Held**, answering all questions in the affirmative and ordering the defendant to pay costs of RM8,000 to the plaintiff subject to allocator:

(1) The principle enunciated in the FC case of *Lee Tak Suan & Anor v Tunku Dato Seri Shahabudin bin Tunku Besar Burhanuddin & Ors* [2009] 4 MLJ 759 ('Lee Tak Suan') was that a society, upon its registration under

a statute (Act 832), gained legal recognition of its existence; thus, Kelab PJ was a legal entity. It was undisputed that s 9(c) of Act 832 provided that a society could be sued in the name of its office bearer (see para 56(a)).

(2) *Lim Lip Eng*'s case specifically answered the question of whether a political party could maintain a suit for defamation. The FC discussed at length what amounted to defamation, the locus standi of the respondent to sue for damages for defamation, the importance of having a requisite reputation, and, along the way, cited and referred to authorities on companies or societies whether having separate legal entities to sue or be sued in its own name. This was when *Gatley on Libel and Slander* (11th Ed, Sweet & Maxwell) was referred to, and later, discussions were made into the English cases that were relevant to the question posed. The final findings of the FC were based on the lack of locus standi and the respondent's failure to demonstrate that it had a reputation which the law ought to protect. To be specific, the FC stated at the conclusion of its judgment that the respondent (public officer of MCA), 'being a political party, cannot maintain a suit for defamation' thus answering the question posed in the negative (see para 56(b)).

(3) The case of *Lee Tak Suan* was not referred to by the FC in *Lim Lip Eng*. Therefore, the principle mentioned earlier was still good law (see para 56(c)).

(4) In the present case, the defendant was not bringing an action for defamation but only defending themselves from the suit brought by the plaintiff. The specific reasons stated in *Lim Lip Eng* did not apply to the present case, and the court was more inclined to follow *Lee Tak Suan*'s reasoning, which was more similar to the present case (see para 56(d)).

[Bahasa Malaysia summary

Plaintif adalah ahli Kelab PJ ('defendan'), sebuah pertubuhan yang didaftarkan di bawah Akta Pertubuhan 1966 ('Akta 832'). Plaintif telah memfailkan tindakan fitnah terhadap defendan sebagai sebuah kelab dengan menamakan setiausaha kehormatnya, Ignatian Benedict Duraisingham. Sebagai tindak balas, defendan memfailkan permohonan semasa untuk persoalan undang-undang ditentukan pada peringkat awal menurut A 33 k 5 dan/atau di bawah A 14A Kaedah-Kaedah Mahkamah 2012. Persoalan awal yang dikemukakan ialah: 'Bolehkah plaintif memulakan dan mengekalkan tindakan berdasarkan suatu kausa tindakan fitnah terhadap defendan, yang merupakan sebuah pertubuhan menurut peruntukan-peruntukan Akta Pertubuhan 1966'. Mahkamah bagaimanapun telah mencadangkan persoalan-persoalan yang disemak semula seperti berikut: (a) sama ada defendan boleh disaman atas kausa tindakan fitnah berdasarkan kes *Lim Lip Eng v Ong Ka Chuan (as a public officer of a society registered as Malaysian Chinese Association)* [2022] 4 MLJ 454

('Lim Lip Eng'); (b) sama ada Mahkamah Persekutuan ('MP') dalam *Lim Lip Eng*, merujuk kepada kenyataan di perenggan 64 bahawa 'as a matter of policy, the focus or our judgment must be confined to the question of law posed' bermakna penghakiman tersebut hanya terhad kepada persoalan sama ada parti politik atau pertubuhan boleh menyaman atas kausa tindakan fitnah; dan (c) sama ada pertubuhan merupakan entiti undang-undang.

Diputuskan, menjawab semua persoalan secara afirmatif dan memerintahkan defendan membayar kos sebanyak RM8,000 kepada plaintif tertakluk kepada alokator:

(1) Prinsip yang dinyatakan dalam kes *MP Lee Tak Suan & Anor v Tunku Dato Seri Shahabudin bin Tunku Besar Burhanuddin & Ors* [2009] 4 MLJ 759 ('Lee Tak Suan') ialah sebuah pertubuhan, apabila didaftarkan di bawah statut (Akta 832), mendapat pengiktirafan undang-undang tentang kewujudannya; Oleh itu, Kelab PJ adalah sebuah entiti yang sah. Tidak dapat dipertikaikan bahawa s 9(c) Akta 832 memperuntukkan bahawa sesebuah pertubuhan boleh disaman atas nama pemegang jawatannya (lihat perenggan 56(a)).

(2) Kes *Lim Lip Eng* secara khusus menjawab persoalan sama ada parti politik boleh mengekalkan saman fitnah. Mahkamah Persekutuan membincangkan dengan panjang lebar apa yang dimaksudkan dengan fitnah, locus standi responden untuk menuntut ganti rugi untuk fitnah, kepentingan mempunyai reputasi yang diperlukan, dan sambil itu memetik dan merujuk kepada autoriti mengenai syarikat atau pertubuhan sama ada mempunyai entiti undang-undang yang berasingan untuk menyaman atau disaman atas namanya sendiri. Ketika itulah *Gatley on Libel and Slander* (11th Ed, Sweet & Maxwell) dirujuk, dan kemudiannya, perbincangan dibuat berkenaan kes-kes Inggeris yang berkaitan dengan persoalan-persoalan yang dikemukakan. Dapatan akhir MP adalah berdasarkan ketiadaan locus standi dan kegagalan responden untuk menunjukkan bahawa ia mempunyai reputasi yang harus dilindungi oleh undang-undang. Secara khusus, MP menyatakan pada akhir penghakimannya bahawa responden (pegawai awam MCA), 'sebagai parti politik, tidak boleh mengekalkan saman fitnah' sekali gus menjawab persoalan yang dikemukakan secara negatif (lihat perenggan 56(b)).

(3) Kes *Lee Tak Suan* tidak dirujuk oleh MP dalam *Lim Lip Eng*. Oleh itu, prinsip yang disebutkan sebelum ini masih merupakan undang-undang yang baik (lihat perenggan 56(c)).

(4) Dalam kes semasa, defendan tidak membawa tindakan fitnah tetapi hanya membela diri daripada saman yang dibawa oleh plaintif. Alasan khusus yang dinyatakan dalam *Lim Lip Eng* tidak terpakai untuk kes semasa, dan mahkamah lebih cenderung untuk mengikuti alasan dalam

kes *Lee Tak Suan*, yang lebih serupa dengan kes semasa (lihat perenggan 56(d)).]

Cases referred to

Chong Chieng Jen v Government of State of Sarawak & Anor [2019] 3 MLJ 300; [2019] 1 CLJ 329, FC (refd)

Derbyshire County Council v Times Newspapers Ltd and others [1993] 1 All ER 1011, HL (refd)

Goldsmith & Another v Bhoyrul & Others [1998] QB 459, QBD (refd)

Lee Tak Suan & Anor v Tunku Dato Seri Shahabudin bin Tunku Besar Burhanuddin & Ors [2009] 4 MLJ 759, FC (folld)

Lim Lip Eng v Ong Ka Chuan (as a public officer of a society registered as Malaysian Chinese Association) [2022] 4 MLJ 454, FC (distd)

Mohd Zai bin Mustafa (in the capacity of Secretary, and on behalf of the Malaysian Islamic Education Development Organization, known as Majlis Pembangunan Pendidikan Islam Malaysia (MAPPIM)) v Menteri Pendidikan Malaysia & Ors and other appeals [2024] 2 MLJ 384; [2024] 2 CLJ 753, CA (refd)

Petroleum Nasional Bhd v Kerajaan Negeri Terengganu [2004] 1 MLJ 8, CA (refd)

R Rajagopal @ RR Gopal @ Nakkheeran Gopal and another v Ms J Jayalalitha and another AIR 2006 Madras 142, HC (refd)

Legislation referred to

Civil Law Act 1956 s 8(1)

Companies Act 2016 s 20

Rules of Court 2012 O 14A, O 18 r 19(1)(a), (1)(b), (1)(c), (1)(d), O 33 rr 2, 5

Societies Act 1966 s 9(c)

Societies Act (Cap 311) [SG] s 35(b)

Shangeetha a/p Thana Sehgaran (S Thilaga) for the plaintiff.

Ashok Kandiah (with Mishand Pathmanathan) (Haris Ibrahim Kandiah Partnership) for the defendant.

Noor Hayati J:

INTRODUCTION

[1] Defendant filed this application for a question of law to be determined on preliminary issue by this court under O 33 r 5 and/or under O 14A of the Rules of Court 2012 ('the ROC') via encl 41. The initial question posed is:

> Can the Plaintiff commence and sustain an action on a cause of action in defamation against the Defendant, which is a society pursuant to the provisions of the Societies Act 1966.

[2] In the midst of hearing both parties, I have proposed revised questions as follows:

(a) whether the defendant can be sued for defamation in the light of *Lim Lip Eng*'s case?

(b) whether the Federal Court in *Lim Lip Eng*, referring to the statement in para 64 that 'as a matter of policy, the focus or our judgment must be confined to the question of law posed' means that the judgment is limited only to whether a political party or society can sue for defamation? and

(c) whether a society is a legal entity?

[3] On 13 September 2024, having heard both parties and submissions filed, I answered the questions in the affirmative and gave my brief grounds pronounced as follows:

Decision

I have considered in detail the issue raised by the defendant and, after careful consideration of the submissions on the impact and applicability of the *Lim Lip Eng* case, I have come to the following conclusion:

1. The principle enunciated in the case of *Lee Tak Suan* (FC) was that a society, upon its registration under a statute (the Societies Act), gains legal recognition of its existence; thus, Kelab PJ is a legal entity. It is undisputed that s 9(c) provides that a society can be sued in the name of its office bearer.

2. *Lim Lip Eng*'s case specifically answered the question of whether a political party can maintain a suit for defamation. FC discussed at length what amounts to defamation, the locus standi of the respondent (Ong Ka Chuan) to sue for damages for defamation, the importance of having a requisite reputation, and, along the way, cited and referred to authorities on companies or societies whether having separate legal entities to sue or be sued in its own name. This was when *Gatley on Libel and Slander* was referred to, and later, discussions were made into the English cases that were relevant to the question posed. The final findings of the FC were based on the lack of locus standi and the respondent's failure to demonstrate that it has a reputation which the law ought to protect. To be specific, the FC states at the conclusion of its judgment that the respondent in the instant case (public officer of MCA), 'being a political party, cannot maintain a suit for defamation' thus answering the question posed in the negative.

3. The case of *Lee Tak Suan* was not referred to by the FC in *Lim Lip Eng*. Therefore, the principle mentioned earlier is still good law.

4. In the present case, the defendant is not bringing an action for defamation but only defending themselves from the suit brought by plaintiff. The

specific reasons stated in *Lim Lip Eng* do not apply to the present case, and I am more inclined to follow *Lee Tak Suan*'s reasoning, which is more similar to this case.

Based on the brief reasons above, my answer to the original question would be in the affirmative and also to all the re-formulated questions, all in the affirmative.

Therefore, defendant's application in encl 41 is answered accordingly, and I will order the cost of this application to be paid to plaintiff. Cost of RM8000 to the plaintiff subject to allocator.

The matter will proceed to trial.

[4] The defendant has now appealed to the Court of Appeal, and I have set out my reasons below.

THE UNDISPUTED FACTS

[5] Plaintiff is a member of Kelab PJ, a society registered under the Societies Act 1966 ('the SA'), an unincorporated association. The defendant is being sued as a club, naming its honorary secretary, Ignatian Benedict Duraisingham, as the office bearer.

[6] The plaintiff's claim against the defendant is for defamation with respect to an article allegedly published in bulletins and messages attributed to the club.

[7] The allegation of defamation canvassed as in the statement of claim has yet to be heard; therefore, I will not venture much into the factual details.

[8] Defendant filed this application for a question of law to be preliminarily determined pursuant to O 33 r 5 and/or under O14A of the ROC. It was contended that the outcome of this suit may be determined by the question of law posed. If answered in the negative, the trial may be rendered unnecessary.

THE GOVERNING PRINCIPLES ON O 33 R 5 AND/OR O14A OF THE ROC

[9] Order 33 r 5 of the ROC provides that 'If it appears to the Court that the decision of any question or issue arising in a cause or matter and tried separately from the cause or matter substantially disposes of the cause or matter or renders the trial of the cause or matter unnecessary, it may dismiss the cause or matter or make such other order or give such judgment therein as may be just'.

[10] Rule 2 of the same provides that whereupon the court, after deciding that the preliminary issue rendered a full trial unnecessary, may forthwith

dismiss the cause of matter or make such other order or judgment as it deems fit:

> 2. The Court may order any question or issue arising in a cause or matter, whether of fact or law or partly of fact and partly of law, and whether raised by the pleadings or otherwise, to be tried before, at or after the trial of the cause or matter, and may give directions as to the manner in which the question or issue shall be stated.

[11] The Court of Appeal case of *Petroleum Nasional Bhd v Kerajaan Negeri Terengganu* [2004] 1 MLJ 8 was referred to, and it states as follows:

> Order 33 r 2 of the RHC states that the court may order any question or issue arising in any cause or matter, whether of fact or law or partly of fact and partly of law, and whether raised by the pleadings or otherwise, to be tried before, at or after the trial of the cause or matter, and may give directions as to the manner in which the question or issue shall be stated. The Federal Court in *Palaniappa Chettiar v Sithambaram Chettiar & Ors* [1982] 1 MLJ 186; [1981] CLJU 156; [1981] 1 LNS 156 agreed with the learned judge in holding that it would be convenient to try the preliminary issue, as if the contention of the respondents was upheld, that could conclude the whole proceedings and it would be unnecessary to try the other issues. In *Sl Rajah & Anor v Dato Mak Hon Kam & Ors (No 1)* [1993] 3 MLJ 741; [1994] 1 CLJ 207 Lim Beng Choon J, after considering a large number of authorities on the ambit of O 33 r 2 and its equivalent, stated that before deciding to allow the preliminary questions to be raised, the court must bear in mind the following observations:
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> (a) as a general rule the court will exercise its power under O 33 r 2 if and only if the trial of the question will result in a substantial saving of time and expenditure which otherwise would have to be expended should the action go to trial as a whole;
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> (b) an order under the said rule should not be made in respect of matters which by reason of the obscurity either of the facts or the law ought to be decided at the trial of the suit;
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> (c) preliminary points of law have been described as too often of so-called issues of fact, the justification is even harder to discern; and
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> (d) a preliminary question should be carefully and precisely framed so as to avoid difficulties of interpretation as to what is the real question which is being ordered to be tried as a preliminary issue.

[12] On the principles governing applications under O 14A are too well-settled. In the case of *Mohd Zai bin Mustafa (in the capacity of Secretary, and on behalf of the Malaysian Islamic Education Development Organization, known as Majlis Pembangunan Pendidikan Islam Malaysia (MAPPIM)) v Menteri Pendidikan Malaysia & Ors and other appeals* [2024] 2 MLJ 384; [2024] 2 CLJ 753, the Court of Appeal had recently summarised it as follows:

[21] The existence of a question of law or construction to be determined by the Court must be clearly discernible from the pleadings of the parties. The question of law or construction must also be one that is capable of being determined without a full trial of the action, and hence, the procedure in O 14A may not be appropriate where there are conflicting allegations of fact that affect the determination of the questions of law or construction, or where there are facts in issue that are interwoven with the legal issues raised. Where there exist disputes of fact on the affidavits, the court may, nonetheless, proceed to exercise its discretion to determine whether the undisputed or agreed facts provide a sufficient basis to determine the question of law or construction: see *Bato Bagi & Ors v Kerajaan Negeri Sarawak & Another Appeal* [2011] 6 MLJ 297; [2011] 8 CLJ 766. A court should not decline to consider an application under O 14A simply on the basis that the question of law or issue of construction is or appears to be complicated (see *Petroleum Nasional Bhd v Kerajaan Negeri Terengganu* [2004] 1 MLJ 8; [2003] 4 CLJ 337; [2003] 5 AMR 696; [2003] 1 MLRA 582). The determination of the application under O 14A need not necessarily dispose of the entire case; it suffices if the answer arrived at by the court disposes of 'any claim or issue' in the action (supra, and *Wang Bao' An & Ors v Malaysian Airline System Bhd & Other Cases* [2018] 11 MLJ 585; [2018] 7 CLJ 371). The question of law or construction, which the court is to determine, must be set out in clear and precise terms (*Lekaz Constructions Sdn Bhd v KOP Petroleum Sdn Bhd; HSBC Bank Malaysia Bhd (Intervener)* [2003] 4 CLJ 377; [2003] 6 AMR 74).

PRELIMINARY DETERMINATION OF THE ISSUES NECCESSARY?

[13] Plaintiff submitted, in objecting to this application, that the question posed by defendant failed to meet the legal requirements as the issue raised is interwoven with the disputed facts, and it cannot substantially dispose of the matter or render the trial unnecessary.

[14] With regard to this contention, I am with the defendant that, upon careful consideration of the consequential effect of the question initially posited, it would determine the core issue of locus standi of the defendant, which is being sued in a defamation claim allegedly as discussed in the Federal Court case of *Lim Lip Eng v Ong Ka Chuan (as a public officer of a society registered as Malaysian Chinese Association)* [2022] 4 MLJ 454.

[15] As much reliance was made on this case of *Lim Lip Eng* by the defendant, I have proposed to re-formulate the question to directly refer to the decision in *Lim Lip Eng* to be more precise in my answer. Both parties conceded to proceed with the revised questions framed.

ANALYSIS OF THE QUESTIONS FRAMED

[16] First of all, I am grateful to both parties for their efforts, assistance, and cooperation in assisting me in this matter. I appreciate their comprehensive written submissions and, even more, the interactive and well-reasoned

spontaneous responses of both counsels to my impromptu questions during oral arguments.

[17] Before going into details on the questions framed, I will discuss below the case of *Lim Lip Eng* and another Federal Court decision which was decided much earlier, *Lee Tak Suan & Anor v Tunku Dato Seri Shahabudin bin Tunku Besar Burhanuddin & Ors* [2009] 4 MLJ 759 to understand the position and applicability of the principles enunciated in both cases to the present issue.

[18] In *Lim Lip Eng*, the respondent/plaintiff, Ong Ka Chuan, is a public officer of the Malaysian Chinese Association (MCA), a political party, who filed an action against the appellant/defendant, Lim Lip Eng, a member of Parliament, at the High Court for an allegedly defamatory statement issued by the latter at a press conference.

[19] The appellant applied to strike out the respondent's claim pursuant to O 18 r 19(1)(a) or (b), (c) and/or (d) of the ROC on the ground that the respondent, being a political party, had no locus standi to file a defamation suit.

[20] The application was dismissed by the High Court with costs, and on appeal, the High Court's decision was affirmed by the Court of Appeal.

[21] The appellant was granted leave to appeal to the Federal Court (FC) on the following question of law:

> Whether a political party can maintain a suit for defamation having regard to the decisions in *Goldsmith & Another v Bhoyrul & Others* [1998] QB 459 and *Rajagopal v Jayalalitha* [2006] 2 MLJ 689.

[22] Notably, and for reference, the above cases mentioned (*Goldsmith* and *Rajagopal*) had extended the principle expounded by the House of Lords in *Derbyshire County Council v Times Newspapers Ltd and others* [1993] 1 All ER 1011, that a local authority did not have the right to maintain an action for damages for defamation, to political parties.

[23] In deliberating on the question posted, the FC touches on the effect of a defamatory statement and the elements of defamation. It reiterates that the core issue before them was whether a political party like MCA could maintain a suit for defamation (see para 24) and have a cause of action in an action for defamation (para 26). Therefore, the FC elaborated on the issue of the respondent's locus standi to sue for damages for defamation.

[24] The FC answered it almost instantly in para 26:

> [26] ... In our view, the respondent does not have a reputation for which it may maintain an action for damages for defamation. If one turns to the case authorities and look at the matter as a question of principle, the following principles of law are well settled.

[25] It was made clear by the FC that MCA does not have a cause of action in defamation as it does not have a reputation to protect. The FC explained and gave their reasons in the following paras 27–28:

> [27] First, an individual's name and reputation are inherent to their rights of a dignified life (see *Abdul Rahman Talib v Seenivasagam & Anor* [1965] 1 MLJ 142; [1964] CLJU 2; [1964] 1 LNS 2; and *MGG Pillai v Tan Sri Vincent Tan Chee Yioun & Other Appeals* [1995] 2 MLJ 493; [1995] 2 CLJ 912). A corporation's trading reputation is important for its commercial operations and business opportunities (see *South Hetton Coal Company Ltd, supra; Jameel v Wall Street Journal Europe SPRL* [2007] 1 AC 359; and *Mak Khuin Weng v Melawangi Sdn Bhd* [2016] 5 MLJ 314; [2016] 8 CLJ 831 (CA)). A Government's governing reputation is important to be protected for the maintenance of public trust and the general good of intergovernmental relations and economic benefits (see *Chong Chieng Jen*).
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> [28] No arguments were advanced by the respondent on *how a political party*, as opposed to an individual, a corporation and a Government, *has the requisite reputation which the law of defamation is intended to protect*. This, in itself, is a sufficient ground to dispose this appeal. *A political party has no requisite reputation to constitute cause of action for defamation*. This is borne out when we compare the status of the respondent with say, a company. (Emphasis added.)

[26] In further deliberating the 'sense' of locus standi, which the FC held that MCA was lacking, ruled that it does not have the necessary cause of action. It is pertinent to note that the FC did remark that MCA may have the legal capacity to sue, but that does not mean they have the standing to bring an action for defamation. Paragraph 29 states as follows:

> [29] *Although the respondent may have the legal capacity to sue or to bring an action*, that does not *ipso facto* mean that there is standing to bring an action for defamation. It is *locus standi* in this sense that we find the respondent seriously lacks, that it does not have the necessary cause of action as it does not have a reputation for and over which it may go to court to sue to protect. (Emphasis added.)

[27] Thereafter, the FC proceeded to discuss the meaning of cause of action in a defamation claim and states, in para 34, that *in the context of a defamation claim, the requisite cause of action hinges upon reputation*.

[28] Following that, the FC discussed issues that are now much more relevant to this application, that is the Societies Act 1966.

[29] I refer to paras 35 and 36 and summarise the findings of the FC, in

particular to the present issues, as follows:

(a) a society does not have separate legal identities from its shareholders/directors (references are made to s 20 of the Companies Act 2016 and s 9(c) of the SA);

(b) a company has a legal personality and is able to sue and be sued in its own name;

(c) a society is dependent on its members to sue; and

(d) a society is not, on its own, a legal entity and cannot even sue or be sued in its own name (s 9(c) of SA).

[30] In making the above statement, the FC referred to the opinion in *Gatley on Libel and Slander* (11th Ed, Sweet & Maxwell), and I quote para 37:

> [37] There is similar opinion in *Gatley on Libel and Slander* (11th Ed, Sweet & Maxwell) at p 251 para 8.28:
>
> Where members of an unincorporated group publish a libel each one who authorized or participated in it is personally liable in the normal way. Where the members of such a group are defamed, each has his own action if sufficiently identified by the libel. An action for libel will not lie against an unincorporated association or body of persons in its collective name, for as an entity it can neither publish nor authorize the publication of a libel. Nor can it sue, for it lacks sufficient personality.

[31] The FC then differentiated Singaporean cases that refer to s 35(b) of their Societies Act, which was in contrast with our s 9(c). The latter provides for the right to sue or be sued through the members or office bearers of the society, and the former provides that society may sue or be sued in the name in which it is registered (para 38).

[32] Based on the above position of law, the FC held, applying the principles to the fact of *Lim Lip Eng*'s case, that since MCA 'has no existence separate from its members, it cannot assert or claim any reputation. In the law of defamation, the absence of this most essential element is sufficient to bar the claim from proceeding any further'.

[33] The FC then went on to discuss s 8(1) of the Civil Law Act 1956 and concluded that the provision is 'irrelevant to the discussion of whether a non-natural person such as a political party, has the locus standi and cause of action to constitute and maintain a defamation action' (para 46).

[34] In justifying that political parties do not have the requisite reputation to complain in the law of defamation, the FC continue to examine the four main

cases relied on by the parties (see paras 48–76).

[35] Whilst in the midst of discussing the case of *Chong Chieng Jen v Government of State of Sarawak & Anor* [2019] 3 MLJ 300; [2019] 1 CLJ 329, which was primarily relied on by MCA, the FC held as follows:

> [64] It is necessary to point out that the case of *Chong Chieng Jen*, supra, is not the subject of the question of law posed to this court. The reason for this is that unlike the present case, the central issue in *Chong Chieng Jen* was not whether a political party can maintain a suit for defamation. In *Chong Chieng Jen*, we were primarily required to decide whether the state government had a right to sue for damages for defamation. *Now, in an appeal to the Federal Court, as a matter of policy, the focus of our judgment must be confined to the question of law posed to the court*. Another point to emphasis is that the present appeal should not be used as a platform to revisit the Federal Court's decision in *Chong Chieng Jen*, nor to re-litigate the correctness of the approach taken in that decision. The Appellant cannot be allowed to use the present appeal as a backdoor approach to circumvent the settled law decided by the Federal Court in *Chong Chieng Jen*. Leave was not granted to revisit the same question of law which had been decided in *Chong Chieng Jen*. This court should exercise judicial restraint from reopening and overruling its recent decisions unnecessarily. Any decision of this apex court should not be disturbed unless in the most exceptional cases. In the present appeal there is none. We should remind ourselves that if at all, its correctness may only be questioned where an identical point of law arises for decision. There can be no doubt that it is permissible for judges to see things in wholly different ways. But we should be very slow to entertain a request to revisit or depart from our earlier decision. It would be unfortunate if the law is in a constant state of flux and create uncertainty. To explain this point further, we refer to our decision in *Koperasi Rakyat Bhd v Harta Empat Sdn Bhd* [2000] 3 MLJ 81; [2000] 3 CLJ 719 (FC) at p 88 paras D to E where Gopal Sri Ram JCA said:
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> > In the instant appeal a further attempt has been made by the plaintiff to resurrect the decision in *Che Wan Developmen*t and to reverse *Feyen No 1*. In my judgment, this attempt must fail for two reasons. First, I do not think, as a matter of policy, it is open to us to reverse a decision of another division of this court given so recently. Great care must be taken especially in a case as the present which concerns the interpretation of a statutory provision. It should not be done save in the most exceptional of cases. Otherwise it would lead to uncertainty. (Emphasis added.)

[36] I specifically quoted the above analysis by the FC to the attention of both parties in the present case as the defendant had consistently submitted that although in *Lim Lip Eng*, the society is suing another party for defamation, the decision of the FC should also apply to the defendant even thought in this case, the defendant (Kelab PJ) is defending themselves (being sued) in the name of its office bearers.

[37] Defendant further submits that one cannot divorce the conclusion that

a political party cannot sue in defamation from the conclusion that a society cannot sue or be sued in defamation.

[38] Unfortunately, I am inclined to disagree with such a contention. I am guided by the statement of the FC that, in answering a question of law posted for determination, a principle founded on one specific question should not be read to be applied by way of extension to another different set of facts (para 64).

[39] Before I discuss further the above, I will pause for a while and proceed to the conclusions and final findings of the FC in *Lim Lip Eng*.

[40] The FC, through the judgment of Justice Zaleha Yusof, FCJ concluded its findings and analysis of the question framed as stated in paras 88–90 and held that MCA, being a political party, cannot maintain a suit for defamation.

[41] On the applicability of the *Derbyshire* principle in Malaysia, Justice Harminder Singh Dhaliwal, FCJ, summarised in para 102 that it is not applicable in Malaysia based on the given reasoning. Reproduced below for ease of reference:

> [102] This court unanimously held that the *Derbyshire* principle is not applicable in Malaysia. The reasoning of the court may be summarised thus:
>
> (i) the *Derbyshire* principle is a principle of the common law in England. The court should be wary of importing English common law principles when legislation in Malaysia has already provided for the principles of law to be applied;
>
> (ii) the right of the Federal and State Governments to sue is a statutory right, specifically provided in s 3 of the GPA 1956. The statutory right of the State Government to sue in civil proceedings is not subject to the common law of England;
>
> (iii) under the GPA 1956, the right of the Government to bring civil proceedings is broadly defined to include any proceeding whatsoever of a civil nature before the court. This includes the right to sue for defamation;
>
> (iv) under s 3 of the Civil Law Act 1956, the common law of England can only be applied where no provision has been made by any written law in Malaysia. Since s 3 of the GPA 1956 is a specific law in force concerning the right of the Government to sue, the common law principle in *Derbyshire* does not apply; and
>
> (v) the freedom of speech provided in art 10 of the Federal Constitution is not absolute. Article 10(2)(a) specifically authorises Parliament to impose restrictions to provide for defamation. Thus, the *Derbyshire* principle is not suitable for application in the Malaysian context.

[42] Be that as it may, in differentiating the principle in *Chong Chien Jen* and

the application of the *Derbyshire* principle, the FC, as quoted earlier in para 65, Justice Harminder, too, had concluded in para 115:

> [115] Be that as it may, extending the *Derbyshire* principle to a political party is based on compelling arguments as stated in the judgment in *Goldsmith v Bhoyrul*. It would be contrary to public interest that a political party, which may in the end run a Government if elected by the people, be allowed to maintain an action in defamation against the very voters who had elected the political party to office. The right to sue for defamation would place an undesirable fetter on the freedom of speech. It was therefore of utmost public importance that a political party be open to uninhibited public criticism so that members of the public have all the information required to make an informed decision as to which political party best represents their interests.

[43] Coming back to the present case, in answering the re-formulated questions, I've answered all three in the affirmative for the following reasons.

[44] Defendant here was being sued, not in the name of Kelab PJ, but in the name of one of its members being the registrered office bearer of Kelab PJ, the society. This is in conformity with s 9(c) of the SA, which provides:

> (c) a society *may sue or be sued in the name of such one of its members* as shall be declared to the Registrar and registered by him as the public officer of the society for that purpose, and, if no such person is registered, it shall be competent for any person having a claim or demand against the society to sue the society in the name of any office-bearer of the society. (Emphasis added.)

[45] In this case, the defendant cited FC's reference to *Gatley on Libel and Slander* and emphasised that an action for libel will not lie against an unincorporated association in its collective name. I am of the view that this is an incorrect way of looking at the sentence used in *Gatley* and should not, by implication, suggest that the FC had, while making reference to it, held that a society cannot be sued for damages.

[46] I find that the FC merely states that a society (or an unincorporated association) cannot sue or be sued *in its collective name or its own name*. It does not state that a society is immune or barred from suing and being sued in the name of its office bearers, as the same is allowed and provided in s 9(c) of the SA.

[47] On this finding, I am guided by the Federal Court decision in *Lee Tak Suan & Anor v Tunku Dato Seri Shahabudin bin Tunku Besar Burhanuddin & Ors* [2009] 4 MLJ 759 which was not referred to or perhaps not brought to the attention of the FC in the case of *Lee Lip Eng*.

[48] In *Lee Tuck Suan*, one of the issues that arose for determination was

whether the club (The Selangor Turf Club), being an unincorporated association, could sue or be sued by reason of s 9(c) of the SA.

[49] Justice Abdul Aziz Mohamad, FCJ, upon deliberating the lengthy submission of parties on the 'legal entity', had this to say in para 13:

> [13] As to the right to sue and liability to be used, according to s 9(c) of the Act a society may sue or be sued in the name of the member who is its registered public officer or, if there is no registered public officer, in the name of an office bearer of the society. The person in whose name the society sues or is sued is stated in s 9(e)(ii) as suing or being sued 'on behalf of the society'. This means that although the suit is not in the society's name, it is still a suit by or against the society, but through its agent ...

[50] Further, Justice Abdul Aziz states in paras 25, 27 and 28:

> [25] ... I do not see a rationale for not allowing a registered society, having the features that I have mentioned, including the right and liability to sue and be sued, to be recognised as a legal entity merely for the fact that it cannot sue and be sued in its name.
>
> ...
>
> [27] ... the fact that an incorporated association is registered under the statute is itself a legal recognition of its legal existence.
>
> [28] In conclusion, the club is, in my judgment, a legal entity and is therefore susceptible to the application of the rule in *Foss v Harbottle* and exceptions to it and therefore the plaintiffs proceeding by way of derivative action is in order.

[51] The association here (Kelab PJ) is indisputably not a political party. Another point that distinguishes the decision in *Lim Lip Eng* is that the FC had specifically discussed that a political party, although an association, does not have a reputation that can be defamed.

[52] The FC did not in any way impose a blanket prohibition on all registered associations from being sued for defamation. Extending *Lim Lip Eng* to this circumstance would open up an exception to an association's liability for defamation of any party and allow it to avoid being sued for defamation.

[53] I reiterate the question posed in *Lim Lip Eng*, which explicitly referred to a political party, regarding whether it could maintain a suit for defamation. The FC had decided that, being an entity not having a reputation capable of being defamed, they had answered the question in the negative.

[54] I find that the answer by the FC was limited to the exact question posed and should not be taken to be interpreted, by extension, applied to the question

posed before me, which differs in the position of the parties. Hence, I find that the defendant's attempt to propose a reverse strategy to escape liability does not hold water.

[55] Again, Kelab PJ is not a political party. They are not suing for damages for defamation against them. They are being sued by the plaintiff, who named the office bearers on behalf of the society to enable them to defend themselves in the allegations against them. All are done within the provisions of the existing law.

[56] Therefore, as mentioned earlier, I've answered all questions in the affirmative, and I reiterated and summarised the reasons again as follows:

(a) the principle enunciated in the case of *Lee Tak Suan* was that a society, upon its registration under a statute (the Societies Act), gains legal recognition of its existence; thus, Kelab PJ is a legal entity. It is undisputed that s 9(c) provides that a society can be sued in the name of its office bearer;

(b) *Lim Lip Eng*'s case specifically answered the question of whether a political party can maintain a suit for defamation. FC discussed at length what amounts to defamation, the locus standi of the respondent (Ong Ka Chuan) to sue for damages for defamation, the importance of having a requisite reputation, and, along the way, cited and referred to authorities on companies or societies whether having separate legal entities to sue or be sued in its own name. This was when *Gatley on Libel and Slander* was referred to, and later, discussions were made into the English cases that were relevant to the question posed. The final findings of the FC were based on the lack of locus standi and the respondent's failure to demonstrate that it has a reputation which the law ought to protect. To be specific, the FC states at the conclusion of its judgment that the respondent in the instant case (public officer of MCA), 'being a political party, cannot maintain a suit for defamation' thus answering the question posed in the negative;

(c) the case of *Lee Tak Suan* was not referred to by the FC in *Lim Lip Eng*. Therefore, the principle mentioned earlier is still good law; and

(d) in the present case, the defendant is not bringing an action for defamation but only defending themselves from the suit brought by plaintiff. The specific reasons stated in *Lim Lip Eng* do not apply to the present case, and I am more inclined to follow *Lee Tak Suan*'s reasoning, which is more similar to this case.

[57] Therefore, defendant's application in encl 41 is answered accordingly, and I ordered a cost of RM8000 to be paid to plaintiff, subject to the allocator.

All questions answered in the affirmative; defendant was ordered to pay costs of RM8,000 to plaintiff subject to allocator.

Reported by Dzulqarnain Ab Fatar